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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-first session

SUMMARY RECORD OF THE 1528th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 August 2002, at 10 a.m.

Chairman: Mr. DIACONU

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The meeting was called to order at 10.10 a.m.

SOLEMN DECLARATION BY A NEWLY ELECTED MEMBER OF THE COMMITTEE UNDER RULE 14 OF THE RULES OF PROCEDURE

1. In accordance with rule 14 of the rules of procedure, Mr. THIAM, newly elected member of the Committee, made the following solemn declaration:

> "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously."

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eleventh to fifteenth periodic reports of Senegal (CERD/C/408/Add.2; HRI/CORE/1/Add.51/Rev.1) (continued)

2. At the invitation of the Chairman, the members of the delegation of Senegal resumed their places at the Committee table.

3. Ms. NIANG (Senegal), apologizing for the fact that five reports had been combined into one, said that fuller written replies to the Committee's questions - specifically statistical information - would be made available at a later date. It was certainly true that Senegal had not acceded to various basic international instruments on the status and protection of refugees, but the Government's failure to ratify those instruments was more of an oversight than a deliberate policy. The Committee's comments would facilitate efforts to lobby for the ratification of the conventions concerned.

4. As to the current refugee situation, it should be pointed out that Senegal was an open, tolerant and hospitable country, and was acknowledged as such throughout Africa. From a historical perspective, immigrants had always integrated successfully into Senegalese society and had never experienced problems in finding work. In managing refugee questions, it was important to establish dialogue not only with donors but also with the countries where refugees originated. A special commission had been set up to deal with all questions relating to eligibility criteria for refugees; its members were drawn from a wide range of Government departments and its principal function was to examine requests for asylum and recommend appropriate action by the authorities. It should be noted that the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) had observer status on the commission.

5. When applying for asylum in Senegal, an individual was issued with a receipt. Presentation of such a receipt ensured that he or she could move around freely. On the other hand, asylum-seekers who committed offences or attempted to destabilize Senegal or their

country of origin from Senegalese territory could expect to face the full force of the law. In such cases, it was for a judge to decide whether they should be held in custody. An asylum-seeker who was arrested for loitering had to be released upon the expiry of the statutory period of police custody; it was unlawful to extend such custody indefinitely. Non-governmental organizations (NGOs) had indeed complained that some asylum-seekers had been unlawfully arrested and held in custody, but the cases in question concerned persons who had not officially registered their desire to remain in Senegal and were therefore illegal immigrants. Likewise, the asylum-seekers who had sought refuge in UNHCR premises in Senegal in 2000 had acted in bad faith, since they regarded Senegal as simply a staging post on the way to Europe.

6. Special villages had been established for the 23,000 Senegalese refugees who had fled to the Gambia owing to the situation in the Casamance region. The centrepiece of government policy towards those refugees was access to land and equipment, thereby enabling them to adopt a more settled way of life and reject banditry. Pockets of rebellion and violence continued to exist in Casamance, but literally within the previous three weeks the Senegalese army had mounted an extensive security operation to neutralize the remaining armed elements in the area. The persons arrested in the course of the operation were not politically motivated at all; they were basically bandits. Incidentally, it should be noted that the Casamance Democratic Forces Movement (MFDC) was recognized as a political movement by the Senegalese Government; only its armed wing was outlawed.

7. The Committee had alluded to the paucity of statistics relating to convictions for violations of human rights on racial grounds. Such convictions were extremely rare because Senegalese culture placed emphasis on various informal mechanisms to encourage conciliation and the resolution of disputes without involving the courts. Nevertheless, specific provision was made in the national budget for legal aid for indigent persons, thus ensuring that everybody enjoyed easy access to justice. NGOs in Senegal performed the valuable function of explaining human rights concepts simply in the mother tongue of the various ethnic communities. Moreover, NGO representatives sat on the Senegalese Human Rights Committee and therefore had a direct say in the development of national human rights policy. All the material scrutinized by the Committee on the Elimination of Racial Discrimination had been screened by the Senegalese Human Rights Committee.

8. On the issue of languages, she said that a new nationwide initiative would be launched in October 2002 to promote the integration of all the national languages into the education system. The language of education would vary from region to region.

9. Mr. de GOUTTES said that the State party should provide further information about the amendments that had been made to the Criminal Code to incorporate the offences listed in article 4 of the Convention. Additional information should also be provided about the current status of activities of the Human Rights and Humanitarian Law Office; it would be useful to learn how the Office worked and how it coordinated its activities with the Inter-Ministerial Commission on Human Rights and International Humanitarian Law and other human rights protection agencies. He would also welcome information about the survival of certain caste practices.

10. Mr. LINDGREN ALVES said that the reporting State should indicate whether men and women enjoyed equal inheritance rights.

11. The CHAIRMAN said that the Committee believed that all groups had the right to a cultural, ethnic and linguistic identity and welcomed the fact that the Senegalese Government was in favour of protecting the specificity of the Casamance region. However, the Committee did not consider the right of self-determination to be a basis for secession and did not condone the indiscriminate use of armed force in the region. A solution needed to be found to protect the distinctive cultural and linguistic character of the region while guaranteeing a climate of peace and social integration with the rest of Senegal.

12. Mr. SARR (Senegal) said that legislation had been introduced in 1981 to amend several articles of the Criminal Code in order to incorporate the provisions of the Convention. The definition of the term racial discrimination contained in the Convention had been incorporated into the Code, extending the scope of the Convention's application to cover discrimination on religious grounds. Nevertheless, even though Muslims represented 95 per cent of the population, the different religions had always lived in harmony. It was interesting to note that President Léopold Sédar Senghor, who had ruled the country between 1960 and 1980, had been a Christian. It was not uncommon for members of Muslim families to have Christian names.

13. Associations that promoted the economic or linguistic development of a specific region posed no problems in Senegal, as all associations were, by law, open to members from anywhere in the country.

14. Mr. DIOUF (Senegal) said that the establishment of a multitude of human rights bodies was illustrative of the political will that existed to make the protection and promotion of human rights a priority. One of the first decisions taken by the new President after the March 2000 presidential elections was to create the Human Rights and Humanitarian Law Office within the President's Office, composed of a delegation split into three divisions under the authority of a delegate: one dealing with international relations, one dealing with domestic legislation and one responsible for considering all types of human rights allegations and claims from both individuals and institutions, including claims against public authorities. The Law Office investigated complaints with a view to recommending action by the President in the form of directives to the relevant government departments. In order to file a complaint, a letter had to be addressed to the President of the Republic or to the human rights delegate. The Office had been inundated with complaints since its establishment.

15. There was no overlap between the activities of the human rights institutions; their mandates simply reflected a division of labour. The mandate of the Human Rights and Humanitarian Law Office was more far-reaching than that of the Ombudsman of the Republic, whose task it was to remind the Executive of its duty to respect basic human rights in its relations with citizens. The Senegalese Human Rights Committee was an independent body set up in compliance with United Nations recommendations. Although it could receive complaints from individuals, its role was primarily a consultative one. The periodic reports drafted by the

Human Rights and Humanitarian Law Office for submission to the international human rights bodies were submitted to the Human Rights Committee for comments before being approved by the Inter-Ministerial Commission on Human Rights and International Humanitarian Law. The Commission was a multidisciplinary body attached to the Prime Minister's Office that allowed for government coordination, which was essential if all aspects of discrimination were to be addressed.

16. Ms. DIALLO (Senegal) said that, although article 7 of the Constitution stipulated that all human beings were equal before the law and specified that men and women had equal rights, it was difficult to ensure that such equality was implemented in practice. Steps to amend article 152 of the Family Code, which discriminated against women, were being considered and efforts were being made to replace paternal authority with parental authority and other discriminatory traditions that were the vestiges of another era. The fact that a woman had been appointed Prime Minister in 2001 indicated that women's rights were becoming a reality.

17. In reply to a question about the caste system, she said that there was no caste of "untouchables" in Senegal. Despite the fact that the Government was trying to adhere to a model based on the Judaeo-Christian notion of equality, whereby there was no domination based on birth, origin or social descent, it was true that in certain remote communities a caste system based on the division of labour did exist, albeit well concealed. Under the leadership of the President, the Government was making a concerted effort to abolish the system. She drew attention once again to the constitutional requirement of equality before the law. In other words, the regulatory framework was in place. The challenge now lay in making the legislation comprehensible to all people in their own language. Some progress had been made; for example, it was clear that there was a growing awareness that attitudes that had been acceptable in post-colonial Africa were not acceptable in the new millennium.

18. Regarding inheritance rights, she said that, under the Family Code, women enjoyed the same inheritance rights as men. However, Muslims had the right to choose customary law for matters concerning inheritance; if they so desired, their property could be distributed according to the provisions of the Shariah. In the absence of a clear choice to that effect, common law prevailed. The Committee could be confident that her delegation would faithfully relay any comments and conclusions made by the Committee to the relevant decision-making authorities in Senegal.

19. Mr. ABOUL-NASR said that a country's approach to Shariah law must be regarded as a whole. Although there might be differences in inheritance law for men and women, it should be remembered that men had responsibilities that women did not have, such as the obligation to take care of their mothers after the death of their fathers. Each country applied those rules in different ways.

20. In his view, Senegal was misusing the word "caste". A caste implied an obligation to belong to a certain group and to fulfil certain functions.

21. Mr. de GOUTTES said he would like to know whether the new provisions of the Criminal Code covered all the offences mentioned in article 4 of the Convention. It would also be useful to know whether the Human Rights and Humanitarian Law Office was empowered to receive complaints of racial discrimination, and whether it could convey such complaints to the judicial authorities. It was essential that the proliferation of human rights institutions should not create an obstacle to justice for human rights complainants.

22. Ms. DIALLO (Senegal) said she was grateful for Mr. Aboul-Nasr's remarks regarding Shariah law. When President Senghor had enacted the Family Code in 1972, he had touched a sensitive nerve. At the time, Senegal was not yet an open, democratic country, and a long process of debate, dialogue and compromise had taken place before the tribal chiefs had been willing to accept the terms of the new law. Senegal, it must be remembered, was predominantly a Muslim country.

23. The Government had used the word "castes" because it had been prompted to do so at the World Conference Against Racism in Durban, and had applied the concept to the social structure of Senegal. The term did not, perhaps, precisely fit.

24. Mr. SARR (Senegal) said that Act. No. 81-77 specifically made all acts listed in article 4, paragraphs (a), (b) and (c) criminal offences. Article 166 bis corresponded to paragraph (c), and prohibited incitement to racial discrimination by public authorities; articles 256 bis and 257 corresponded to paragraph (b), and forbade the dissemination or publication of ideas that incited racial discrimination and activities that promoted racial discrimination. Both carried punishments of prison terms and fines.

25. In Senegal, the Public Prosecutor was empowered to institute proceedings if such acts were brought to his attention, by whatever means. In addition, any person who suffered personally and directly from such a violation could bring proceedings before a court, an examining magistrate or another judicial authority, or a police authority.

26. Mr. DIOUF (Senegal) said it was important to understand the difference between the jurisdiction of the Human Rights and Humanitarian Law Office and that of the ordinary courts. In Senegal, there were two mechanisms for dealing with human rights complaints: the judicial institutions, and the administrative and consultative authorities. In principle, the Law Office was only competent if the complaint had not been brought before the courts. Most people preferred to go before a reconciliation board rather than to appear before the courts. Once a decision was taken by a reconciliation board, a complainant could appeal to the President of the Republic or to the Law Office. Neither, however, had the power to reverse decisions handed down by the courts. The Law Office did not submit cases directly to the courts; however, if it deemed appropriate, it would advise a complainant to bring his case to the attention of the judicial authorities. An important facet of the work of the Law Office was the provision of information and counselling.

27. To his knowledge, no complaints of racial discrimination had come to the attention of the Law Office. He was aware of the case of a Catholic man who had converted to Islam and had suffered persecution as a result.

28. Ms. DIALLO (Senegal) thanked the Committee for its interest in her country. Incomplete information would be supplemented by additional material in the future. The dialogue with the Committee had been informative and enriching.

29. Mr. THORNBERRY commended the Senegalese delegation for its extensive replies, and for its willingness to engage in dialogue. He welcomed the use of the term "caste" by the delegation. If the Committee seemed perplexed by the term, that was because it was in the process of learning about caste and similar systems, and hoped to have a better defined approach to that matter soon.

30. Mr. AMIR (Country Rapporteur) praised Senegal for its concise, rational report and presentation, and for its good faith. The State party had answered all questions, and had fully complied with the requirements of the reporting process. He noted with satisfaction the willingness of the Government to consider the ratification of the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons. Structural adjustment programmes had created the need to re-evaluate the relationship between poverty and the protection of human rights; in that regard, Senegal should benefit from assistance from international financial organizations. It was especially important to establish training programmes in literacy, since illiteracy was an obstacle to democracy and development. The Committee had learned a great deal from the delegation about the history, civilization, economy and legislation of Senegal.

31. The delegation of Senegal withdrew.

The meeting was suspended at 12.15 p.m. and resumed at 12.30 p.m.

ORGANIZATIONAL MATTERS AND METHODS OF WORK (agenda item 2) (continued)

Proposed changes to the programme of work

32. The CHAIRMAN informed the Committee that Fiji intended to submit its overdue report that week. In the absence of any further information about the nature of the report, he would suggest asking the Country Rapporteur to prepare some conclusions which would be passed on to the Government of Fiji. On the basis of those conclusions, the country might wish to amplify its report either in written form or orally before the Committee.

33. Ms. JANUARY-BARDILL said she took it that Fiji would not be subjected to a formal review procedure during the current session.

34. Replying to a question by Mr. RESHETOV, the CHAIRMAN explained that the idea was to rearrange the programme of work to allow the delegation of Fiji to make its presentation; depending on the kind of report presented, the ensuing discussion might simply be a preliminary one pending submission of a full periodic report for subsequent consideration.

35. Regarding consideration of the report of Uganda, the Government appeared to be unaware that the Committee intended to consider its report during the current session, even though three letters to that effect had been sent to the permanent mission since April.

36. Mr. ABOUL-NASR asked whether Uganda had requested postponement of consideration of its report.

37. Ms. PROUVEZ (Secretary of the Committee) informed the Committee that the representative of Uganda had told her that he would be prepared to address the Committee himself, although he had only received a copy of the report that morning.

38. In reply to a suggestion by Mr. de GOUTTES, the CHAIRMAN agreed to ascertain whether the Government of Uganda would undertake to send a delegation to present its report either at the end of the current session or in March 2003.

39. Mr. de GOUTTES recalled that the case of Mali had created a precedent for such a procedure when the Government sent a delegation to make an initial general presentation before subsequently submitting its report for consideration by the Committee.

40. The CHAIRMAN said he took it that the Committee agreed to the proposed changes to the programme of work.

41. It was so agreed.

Thematic discussion on discrimination on the ground of descent

42. The CHAIRMAN said that it was now clear that the Sub-Commission on the Promotion and Protection of Human Rights in its discussions on 8 and 9 August would not focus specifically on descent, and there would therefore be little point in Committee members attending those meetings and rearranging the Committee's own timetable accordingly. NGOs would be amply represented at the Committee's thematic discussion. He himself would appear before the Sub-Commission as arranged on the afternoon of 9 August to update its members on the work of the Committee, with particular reference to its work on descent.

43. Mr. RESHETOV advocated more flexibility in the time allotted to NGO and State party representatives during the thematic discussion so as not to appear to be favouring NGOs. A solution might be to merge the two segments of the discussion rather than to assume that States parties would have less to say.

44. The CHAIRMAN said that the thematic discussion, whether considered official or unofficial, was to be structured in much the same way as the Committee's previous thematic debate on the Roma. It had aroused keen interest among NGOs, many of which had applied to take part, as against only one State party to date. That was the reason for the organizational arrangements, although of course any State party would be free to participate.

45. Mr. HERNDL said that if the Committee were to decide to postpone its consideration of the report of Uganda more time would be available for the important discussion on descent, allowing for more flexibility in the time schedule and an opportunity for questions and answers. Like Mr. Reshetov, he considered that speaking time should not be curtailed.

46. The CHAIRMAN said that, allowing of course for some flexibility, the meetings with NGOs and States parties did not include a questioning procedure. Following those hearings, the Committee would then hold its own discussion on the issue which might, time permitting, be extended, but not beyond Thursday.

Questionnaire relating to the human rights of migrants

47. The CHAIRMAN said that the Committee had been asked to comment on a questionnaire on the human rights of migrants which had been prepared under the auspices of the Commission on Human Rights.

The meeting rose at 12.50 p.m.